

Chapter V. MISCELLANEOUS PROCEDURES

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CHAPTER V. MISCELLANEOUS PROCEDURES

5.01 Procedures for the Release of Information Pertaining to Activities Under the Criminal Justice Act and Related Statutes

A. General Principles.

Neither the Freedom of Information Act (5 U.S.C. § 552) nor the Privacy Act (5 U.S.C. § 552a) applies to the Judiciary and neither is applicable to requests for release to the public of records and information pertaining to activities under the Criminal Justice Act (CJA) and related statutes.

Generally, such information which is not otherwise routinely available to the public should be made available unless it is judicially placed under seal, or could reasonably be expected to unduly intrude upon the privacy of attorneys or defendants; compromise defense strategies, investigative procedures, attorney work product, the attorney-client relationship or privileged information provided by the defendant or other sources; or otherwise adversely affect the defendant's right to the effective assistance of counsel, a fair trial, or an impartial adjudication. (See 5 U.S.C. § 552(b).)

Upon request, or upon the court's own motion, documents pertaining to activities under the CJA and related statutes maintained in the clerk's open files, which are generally available to the public, may be judicially placed under seal or otherwise safeguarded until after all judicial proceedings, including appeals, in the case are completed and for such time thereafter as the court deems appropriate. Interested parties should be notified of any modification of such order.

Requests for release of information pertaining to activities under the CJA and related statutes in the custody of the Administrative Office will be disposed of in accordance with internal directives of that office.

B. Payment Information

For All Payments in Cases Commenced Before April 24, 1996:

The general principles regarding the release of information stated in subparagraph 5.01 A govern.

For Payments to Providers of Services other than Counsel in Cases Commenced on or after April 24, 1996, and for Payments to Attorneys in Cases Commenced on or after April 24, 1996 but before January 25, 1998:

The Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214, amended the CJA, 18 U.S.C. § 3006A, and the Anti-Drug Abuse Act of 1988 (ADAA), codified in part at 21 U.S.C. § 848(q), expressly to provide for disclosure to the public of the amounts paid for representation with respect to cases commenced, and appellate proceedings in which an appeal is perfected, on or after April 24, 1996. With respect to non-capital cases, the CJA, as amended, 18 U.S.C. § 3006A(d)(4) and (e)(4), provides that the amounts paid under those subsections in any case “shall be made available to the public.” With respect to capital cases, the ADAA, as amended, 21 U.S.C. § 848(q)(10)(C), provides that the amounts paid under that paragraph in any case “shall be disclosed to the public, after the disposition of the petition.” The timing of disclosure should be consistent with the principles stated in subparagraph 5.01 A. But see below regarding further legislation and requirements for payments to attorneys only in cases commenced on or after January 25, 1998.

For Payments to Attorneys Only in Cases Commenced on or after January 25, 1998:

The Fiscal Year 1998 Judiciary Appropriations Act, Pub. L. No. 105-119, 111 Stat. 2440, amended paragraph (d)(4) of the CJA, 18 U.S.C. § 3006A, to mandate disclosure of amounts paid to court appointed attorneys upon the court’s approval of the payment. The Fiscal Year 2000 Judiciary Appropriations Act, Pub. L. No. 106-113, 113 Stat. 1501, further amended paragraph (d)(4) to provide that, in death penalty cases where the underlying alleged criminal conduct took place on or after April 19, 1995, the amount of the fees shall not be considered a reason justifying limited disclosure. (Although amended paragraph (d)(4) expired on January 24, 2000, the guideline below continues to apply as a matter of Judicial Conference policy.) Prior to approving such payments, courts are required to provide reasonable notice of disclosure to counsel in order to allow the counsel to request the redaction of specific information based on the considerations set forth in subparagraph (d)(4)(D) of the CJA (and listed below in subparagraph 5.01B(2)(a)). To comply with this notice requirement, it is recommended that, contemporaneously with the issuance to counsel of the CJA 20 or CJA 30 form, courts give appointed counsel a copy of the form created and distributed by the Administrative Office (“Notice to Court Appointed Counsel of Public Disclosure of Attorney Fee Information”).

To satisfy the requirements of this law, courts may release copies of the payment vouchers (the top sheets of completed forms CJA 20 or CJA 30), redacted or unredacted, depending on the stage of the particular case and the statutory considerations involved.

Documentation submitted in support of, or attached to payment claims, is not covered by the law and need not be disclosed at any time.

Attorney payment information should be made available as follows:

(1) FOR ATTORNEY PAYMENTS APPROVED BEFORE OR DURING THE TRIAL: After redacting any detailed information provided to justify the expenses, the court shall make available to the public a copy of the voucher showing only the amounts approved for payment. Upon the completion of trial, an unredacted copy of the voucher may be released, depending on whether an appeal is being pursued and whether the court determines that one or more of the interests listed in subparagraph 5.01 B(2)(a) require the redaction of information.

(2) FOR ATTORNEY PAYMENTS APPROVED AFTER THE TRIAL IS COMPLETED: The court shall make available to the public either a redacted or an unredacted copy of the voucher as follows:

(a) *If trial court proceedings have been completed and appellate review is not being pursued or has concluded at the time payment is approved:* The court shall make an unredacted copy of the payment voucher available to the public unless it determines that one or more of the interests listed below justify limiting disclosure to the amounts approved for payment in the manner described in subparagraph 5.01 B(1). The interests that may require limiting disclosure include:

- i. the protection of any person's 5th Amendment right against self-incrimination;
- ii. the protection of the defendant's 6th Amendment right to effective assistance of counsel;
- iii. the defendant's attorney-client privilege;
- iv. the work product privilege of the defendant's counsel;
- v. the safety of any person; and
- vi. any other interest that justice may require (with the exception that for death penalty cases where the underlying alleged criminal conduct took place on or after April 19, 1995, the amount of the fees shall not be considered a reason justifying any limited disclosure).

(b) *If appellate review is being pursued at the time payment is approved:* The court shall make available to the public only the amounts approved for payment in the manner described in subparagraph 5.01 B(1) unless it finds

that none of the interests listed above in subparagraph 5.01 B(2)(a) will be compromised.

(3) FOR ATTORNEY PAYMENTS APPROVED AFTER THE APPEAL IS COMPLETED: The court shall make an unredacted copy of the payment voucher available to the public unless it determines that one or more of the interests listed in subparagraph 5.01 B(2)(a) justify limiting disclosure to the amounts approved for payment in the manner described in subparagraph 5.01 B(1).

5.02 Annual Report of Attorneys Claiming Compensation for More Than One Thousand Hours. Not later than three months after the end of each fiscal year, the Administrative Office shall prepare reports listing all attorneys who have claimed compensation of more than one thousand hours of services in the preceding fiscal year. The chief judge of each court of appeals and each district court shall receive a copy of the report regarding attorneys within that district or circuit.